Supreme Court, U.S.
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No. ———

In the
Supreme Court of the United States

LEE YEAGER,

Petitioner,

v.

GENERAL MOTORS CORPORATION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Does a job applicant have "standing" to complain of his exclusion from the hiring process just because of his race and gender?

II. Under Fed. R. App. P. R 38, is an award of sanctions appropriate where the circuit court of appeals' "frivolous" determination is predicated on finding that it had twice rejected Appellant's argument in earlier appeals, where that argument was and remains the announced rule of law of this Court and of another circuit court of appeals?

PARTIES TO THE PROCEEDING

Petitioner

Petitioner is Lee Yeager, an individual citizen of the United States, residing in the Northern District (Eastern Division) of Ohio. Petitioner has no corporate affiliations. He was a Plaintiff in the District Court and an Appellant in the Sixth Circuit Court of Appeals.

Paul Schuler was also a Plaintiff in the District Court and Appellant in the Sixth Circuit Court of Appeals; however, he declines further participation in these proceedings.

Respondent

Respondent is General Motors Corporation, a corporation having publicly-traded stock. Petitioner is unaware of any publicly-held company owning ten percent (10%) or more of GMC stock. Respondent was Defendant in the District Court and Appellee before the Sixth Circuit Court of Appeals.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

JURISDICTIONAL STATEMENT 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 1

ARGUMENT 3

The U.S. Court of Appeals for the Sixth Circuit Has Decided an Important Federal Question In a Way That Conflicts With a Relevant Decision of This Court 3

The U.S. Court of Appeals for the Sixth Circuit Has Entered a Decision in Conflict with the Decision of Another United States Court of Appeals on the Same Important Matter 4

The U.S. Court of Appeals for the Sixth Circuit Has Decided an Important Question of Federal Law Which Has Not Been, But Should be Settled by This Court 5

CONCLUSION 7

APPENDIX:

Appendix A
Court of Appeals Opinion, 8/10/05 . . . . . 1a

Appendix B
District Court Memorandum Opinion and
Order, 5/26/04 . . . . . 9a

Appendix C
Constitutional and Statutory Provisions Involved . 21a

Appendix D
Doc. No. 60 of GM/UAW 10/03 Collective
Bargaining Agreement 23a

TABLE OF AUTHORITIES

Cases

Cooter & Gell v. Hartmarx Corp.,
496 US 384, 110 L.Ed.2d 359 (1990) 6

Garnet v. GM,
114 F.Supp.2d 649 (ND Ohio ED 2000) 2

Gratz v. Bollinger,
539 U .S. 244, 156 L.Ed.2d 257 (2003) 3

Northeastern Fla. Chapter, Associated Gen. Contractors of America v. Jacksonville,
508 U.S. 656, 124 L.Ed.2d 586 (1993) 3

Plott v. GM,
71 F.3d 1190 (6th Cir. 1995) 2

Wooden v. Brd. of Regents of Univ. System of GA,
247 F.3d 1262 (11th Cir. 2001) 4

Yeager v. GM,
265 F.3d 389 (6th Cir. 2001) . . . . . *passim*

Yeager v. GM,
67 F. Apx. 335 (6th Cir. 2003) . . . . . *passim*

Statutes

28 U.S.C. §1254(1) 1
42 U.S.C. §2000e 1

Other Authorities

Fed. R. App. Proc. R 38 . . . . . 1, 5, 6
Fed. Civil Rule 11 6

OPINIONS BELOW

Neither the Court of Appeals Opinion (Apx. A at p. A-1) nor District Court Opinion (Apx. B at p. A-8) is reported.

JURISDICTIONAL STATEMENT

The judgment of the Sixth Circuit Court of Appeals was entered 8/10/05. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1); and the timeliness of Petitioner's filing is governed by Supreme Court Rules 13.1 and 13.3.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Article III, Section 2, Clause 1 of the U.S. Constitution and 42 U.S.C. §2000e (Title VII of the Civil Rights Act of 1964), prohibiting discrimination in employment.

STATEMENT OF THE CASE

42 U.S.C. §2000e provided the federal court jurisdiction for this Title VII employment discrimination action brought in the U.S. District Court for the Northern District of Ohio (ED). There, the case was dismissed in summary judgment on "standing to complain" grounds. That dismissal was affirmed on appeal to the U.S. Court of Appeals for the Sixth Circuit where, in addition, the Court awarded Appellee a $5,000 sanction against Appellant and his counsel under Fed. R. App. Proc. ("FRAP") Rule 38. No rehearing request was made. Here, plenary review is sought on petition for writ of certiorari.

At all times relevant to this Petition, Respondent, General Motors Corp. ("GM") has engaged in so-called "reverse" discriminatory employment practices in its apprentice selection process.[1] *See Plott v. GM*, 71 F.3d 1190 (6th Cir. 1995); *Garnet v. GM*, 114 F.Supp.2d 649 (ND Ohio ED 2000); *Yeager v. GM*, 265 F.3d 389 (6th Cir. 2001) ("Yeager I"); and *Yeager v. GM*, 67 F. Apx. 335 (6th Cir. 2003) ("Yeager II"). One such practice is "Targeting."

For prospective job applicants ("candidates") such as Petitioner, Lee Yeager, "Targeting" occurs at the inception of the selection process after the candidates' basic qualifications, race and gender are determined via completion of a Request for Apprenticeship Information form ("RFAI"). Only "qualified" minority and female candidates, i.e., the candidates "targeted" for bypassing the "random draw," together with a designated number randomly-drawn from the remaining pool of candidates, advance to the apprenticeship orientation and application session. There, employment applications are provided for completion preliminary to testing, interview and ultimate hiring from a permanent apprentice selection list.[2] To the candidates whose RFAI's

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[1] Apparently, GM has now discontinued its "pre-apprentice training" reverse-discriminatory practice. Per Doc. No. 60 at p. 487 of the GM/UAW Collective Bargaining Agreement, eff. 10/6/03 (Apx. D), a finding of female and/or minority "under-representation" is now required before implementing pre-apprentice training.

[2] The "permanency" of the selection list is important because, below, the Court of Appeals found it significant that Petitioner Yeager was a "non-seniority" candidate who had no standing to complain of Targeting because GM hired no no-seniority applicants into apprenticeship in 2002. Such is an irrelevant observation

are neither targeted nor randomly drawn, no further consideration is given.

In 2002, Petitioner Yeager was a Caucasian male candidate for apprenticeship at GM's Lordstown Fabrication Plaint in Lordstown, Ohio. Although "qualified" for invitation to Fab Plant's apprenticeship orientation and application session, Yeager was not among the 118 candidates "targeted" for same, because of his race and gender; and his RFAI was not among the 100 RFAIs randomly drawn to so advance.

ARGUMENT

I. The U.S. Court of Appeals for the Sixth Circuit Has Decided an Important Federal Question In a Way That Conflicts With a Relevant Decision of This Court.

Despite the clarity of this Court's views on "standing" to complain of unlawful discrimination, most recently articulated in *Gratz v. Bollinger*, 539 U.S. 244, 156 L.Ed.2d 257 (2003), at 276 citing *Northeastern Fla. Chapter, Associated Gen. Contractors of America v. Jacksonville*, 508 U.S. 656, 666, 124 L.Ed.2d 586, 597 (1993):

> "[t]he 'injury in fact' in an equal protection case of this variety is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit. ...And in the context of a challenge to a set aside program, the 'injury in fact'

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because, regardless of a given hiring year, GM always hires its seniority and non-seniority apprentices from that same permanent selection list.

> is the inability to compete on an equal footing in the bidding process, not the loss of contract."

the Sixth Circuit remains transfixed on the opposite view. Below, it ratified its view that Petitioner lacked standing to complain of "Targeting" by failing to prove that he would have been hired into apprenticeship in the absence of that discriminatory employment practice:

> "As we stated in *Yeager I*, '[t]he relevant question for the purpose of assessing standing is whether Yeager would have been hired as an apprentice if he had been randomly selected.' 265 F.3d at 397..."

This Court should grant certiorari to arrest and rectify and thereby prevent the proliferation of such antithetical understanding and expression of "standing" to complain of unlawful employment discrimination.

II. The U.S. Court of Appeals for the Sixth Circuit Has Entered a Decision in Conflict with the Decision of Another United States Court of Appeals on the Same Important Matter.

In conflict with the "standing to complain" view in the Sixth Circuit is that of the Eleventh Circuit Court of Appeals in *Wooden v. Brd. of Regents of Univ. System of GA*, 247 F.3d 1262 (11th Cir. 2001). At 1278, preceded and followed by repeated allusion to and reliance on *Fla. Gen. Contractors, supra*, that appellate court observes:

> "...the critical inquiry for standing purposes would be whether the plaintiff's application has *actually* been treated differently at some stage in the admissions process on the basis of race. If so, then the plaintiff

has not competed on an equal footing with other applicants outside his racial classification, and standing should be conferred regardless of whether race is ultimately a factor in the decision to reject the application."

This Court should grant certiorari to resolve this circuit conflict.

III. The U.S. Court of Appeals for the Sixth Circuit Has Decided an Important Question of Federal Law Which Has Not Been, But Should be Settled by This Court.

The following excerpt from p. 6 of the Court of Appeals' Opinion provided the basis for its FRAP Rule 38 sanction award against Appellant Yeager and his undersigned counsel:

"In *Yeager I*, Yeager, represented by the same counsel who represents him here, argued that he had standing to sue GM for employment discrimination when his name was not selected in the random drawing. We held that Yeager lacked standing because he would not have been hired as an apprentice even if he had been randomly selected. *Yeager I*, 265 F.3d at 397. When Yeager challenged GM's hiring process again in *Yeager II*, we dismissed his claim for want of standing and noted '[t]he instant case ...presents the same claim at issue in *Yeager I*, despite plaintiff's attempts to rearticulate the claim in a different form.' 67 Fed. Appx. at 38. As in *Yeager I*, we stated that Yeager lacked standing because he could not prove that he would have been selected as an apprentice 'but for' GM's affirmative action measures. *Id.* Relying on the same recycled arguments that we have twice